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11  
12 Attorneys for Plaintiff  
ANITA B. CARR

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14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 AT SAN FRANCISCO

18 ANITA B. CARR,

19 Plaintiff.

20 NO.

21 v.

22 COMPLAINT (ERISA)

23 LIBERTY LIFE ASSURANCE  
24 COMPANY, a Massachusetts  
Corporation, and PROVIDIAN  
25 BANCORP SERVICES, a domestic  
corporation,

26 Defendants.

27  
28 COMPLAINT - 1

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3       The Plaintiff, by her attorneys of the Krafchick Law Firm, alleges as  
4 follows:

5                   **I. PARTIES, JURISDICTION AND VENUE**

- 6       1. Plaintiff Anita B. Carr (Plaintiff Carr) was a resident of Alameda County,  
7                   State of California, at all times relevant to this cause of action.  
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9       2. Defendant Liberty Life Assurance Company of Boston (Defendant  
10                  Liberty) is a Massachusetts Corporation doing business in the State of  
11                  California.  
12  
13       3. Defendant Providian Bancorp Services (Defendant Providian) is the  
14                  ERISA Plan Administrator, based in San Francisco, State of California.  
15  
16       4. The matter in controversy exceeds Seventy Five Thousand Dollars  
17                  (\$75,000.00).  
18  
19       5. Acts complained of and/or contracts made and/or performed as described  
20                  below occurred within the Northern District of the State of California as  
21                  well as in other jurisdictions.  
22  
23       6. This claim is governed by ERISA 29 U.S.C. § 1001 *et seq.*

24                   **II. FACTUAL ALLEGATIONS**

- 25       1. Plaintiff Carr was employed by Defendant Providian from October of 1998  
26                  to November 28, 2001 (See Exhibit 1, complete copy of Defendant  
27                  Liberty's claim file, at CF000091, CF000462, hereafter CF).

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COMPLAINT - 2

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3     2. Before Plaintiff Carr became disabled, she was a director of data services  
4                 for Providian Financial Corporation, and earned approximately \$135,000  
5                 per year (CF000120) plus year-end bonuses.  
6  
7     3. Plaintiff Carr became ill and disabled while she worked for Defendant  
8                 Providian, with a date of disability of August 29, 2001 (CF000462).  
9  
10    4. Plaintiff Carr's treating physicians diagnosed her with fibromyalgia and  
11                 Sjögren's Syndrome. As of August 28, 2001, these illnesses and their  
12                 chronic symptoms rendered her unable to perform with reasonable  
13                 continuity all the material and substantial duties of her own or any other  
14                 occupation for which she is able to be reasonably fitted by training,  
15                 education, experience, age, physical, and mental capacity.  
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17    5. When Plaintiff Carr became ill and disabled, she was covered under a  
18                 disability insurance policy (LTD policy) issued by Defendant Providian  
19                 (CF000462), and premiums were paid to Defendant Liberty in  
20                 consideration for disability insurance coverage, which is defined by  
21                 Defendant Liberty as follows (CF000021):

22  
23                 “Disability” or “Disabled” with respect to Long Term  
24                 Disability Coverage means:

25                 a. i. If the Covered Person is eligible for the 24 Month  
26                 Own Occupation Benefit, “Disability” or “Disabled” means  
27                 during the elimination Period and the next 24 months of  
28                 Disability the Covered Person is unable to perform all of

the material and substantial duties of his occupation on an Active Employment basis because of an Injury or Sickness; and

ii. After 24 months of benefits have been paid, the Covered Person is unable to perform, with reasonable continuity, all of the material and substantial duties of his own or any other occupation for which he is or becomes reasonably fitted by training, education, experience, age and physical and mental capacity.

An employee must first satisfy an elimination period before benefits are paid. The policy provision dealing with the elimination period reads (CF000022):

“Elimination Period” means a period of consecutive days of Disability for which no benefit is payable. The Elimination Period is shown in the Schedule of Benefits and begins on the first day of Disability.

## LONG TERM DISABILITY POLICY COVERAGE

Elimination Period: 90 days

6. Plaintiff Carr became unable to perform her regular occupation at Defendant Providian on or around August 28, 2001 (Exhibit 2, copy of letter from Plaintiff's main treating provider on or around August of 2001, as quoted at CF000467 in Plaintiff's last appeal letter; CF000229; *see also* CF000249; CF000351).

7. The Social Security Disability Administration determined on September 27, 2003 that Plaintiff Carr became totally disabled and eligible for

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3       benefits on or around August 27, 2001 (CF000304-308). Plaintiff Carr  
4       was granted a monthly benefit amount of \$1,509.00 by the Social Security  
5       Disability Administration.

- 6       8. Plaintiff Carr's disabling medical conditions and their symptoms  
7       prevented her from performing the material and substantial duties of her  
8       regular occupation at Defendant Providian, and continue to prevent her  
9       from performing any occupation Defendant Providian can make available  
10      to her, or from working in any reasonable occupation for which she can be  
11      fitted by education, training, or experience.  
12  
13       9. As long as Plaintiff Carr meets the definitions of disability in the LTD  
14      policy, she is entitled to receive long-term disability benefits under the  
15      LTD policy until she reaches 65 years of age on or about October 16, 2014  
16      (CF000462).  
17  
18       10. Plaintiff Carr's date of disability was August 28, 2001, and she became  
19      eligible for LTD benefits as of August 29, 2001. She was completely  
20      disabled during the 90-day elimination period and she remains completely  
21      disabled today.  
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23       11. Plaintiff Carr's elimination period ended on November 27, 2001, 90 days  
24      after August 29, 2001 (CF000462).  
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3 12. Plaintiff Carr filed a claim with Defendant Liberty for benefits under the  
4 LTD policy on or around November 29, 2001. Defendant Liberty denied  
5 this claim on or around January 22, 2002 (CF001094).  
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7 13. Plaintiff Carr appealed on or around March 15, 2002 (CF001094), and  
8 Defendant Liberty again denied the appeal on or around April 29, 2002  
9 (CF000960).  
10  
11 14. Plaintiff Carr filed yet another claim for benefits under the LTD plan on or  
12 around July 28, 2003 (CF000937), which Defendant Liberty denied on or  
13 around November 17, 2003 (CF000768).  
14  
15 15. Plaintiff Carr submitted a comprehensive appeal letter to Defendant  
16 Liberty on or about December 14, 2004 (CF000465), which included  
17 medical records from Plaintiff's treating provider Carol L. Lamb, M.D.  
18 (CF000171-212); Plaintiff's treating provider Rajiv Dixit, M.D.  
19 (CF000213-248); consulting physician and nationally renowned  
20 fibromyalgia expert Robert Bennett, M.D. (CF000249-303); nationally  
21 renowned consulting physical capacities evaluator Theodore Becker,  
22 Ph.D., RPT, (CF000309-350); consulting nationally renowned  
23 neuropsychologist Jay Uomoto, Ph.D. (CF000351-381); consulting  
24 vocational expert Donald Uslan, M.A., M.B.A. (CF000382-454); copy of  
25 the Social Security Disability Administration's Notice of Award of  
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Disability (CF000304-308); and copies of personal letters of support (CF000455-461).

16. Plaintiff Defendant Liberty denied Plaintiff's appeal yet again on January 28, 2005 (CF000021).
  17. Plaintiff Carr primary treating provider on or around August 29, 2001 was Dr. Carol L. Lamb, M.D.
  18. On or around January 3, 2002, Dr. Lamb wrote an Attending Physician's Statement to Defendant Liberty wherein she stated that Plaintiff Carr was suffering from gastroesophageal reflux disease, hypertension, fibromyalgia, and anxiety.
  19. However, Dr. Lamb could not state that Plaintiff Carr had any physical work restrictions as she did not know the full effects of Plaintiff Carr's disabling fibromyalgia.
  20. In October of 2001, Dr. Lamb referred Plaintiff Carr to rheumatologist Rajiv K. Dixit, MD, FACP, for further rheumatological workup.
  21. Dr. Dixit established that Plaintiff Carr was unable to work and totally disabled (CF000229).
  22. On October 1, 2004, Dr. Lamb wrote:

During the period of February to August of 2001, I saw [Plaintiff Carr] on multiple occasions for varying complaints. These included joint aches, fatigue, rash,

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3       headaches and neck pain. The symptoms progressed, and I  
4       felt that there was likely a rheumatologic condition of some  
5       sort. I referred her to see Dr. Dixit, a local rheumatologist  
6       in August 2001. He ultimately diagnosed fibromyalgia and  
7       Sjögren's Syndrome.

8  
9       In retrospect, I believe her condition was such that it did not  
10      allow her to do full work duties - I believe that her  
11      condition was at least a Class 3, if not worse (slight to  
12      moderate limitation of functional capacity). **I would defer  
13      to her rheumatologist's opinion regarding the degree to  
14      which her symptoms interfered with her ability to  
15      perform her usual job.** I do not believe there was a  
16      significant change in her symptoms from the time I saw her  
17      in August, 2001, until she was seen by Dr. Dixit in October  
18      of 2001.

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23     23. Dr. Lamb clarified her opinion regarding Plaintiff Carr's ability to work  
24     from August, 2001 through her elimination period. Dr. Lamb defers to  
25     Plaintiff's Carr's rheumatologists (Dr. Dixit, Dr. Bennett) for further  
26     determination of Plaintiff's Carr's disability due to fibromyalgia.  
27  
28     24. Plaintiff Carr first saw Dr. Dixit on October 24, 2001 (medical records at  
CF000213-248). After taking a full history and physical examination, Dr.  
Dixit diagnosed Plaintiff Carr with Sjögren's syndrome, fibromyalgia  
syndrome, and hypertension, among other diagnoses.  
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28     25. Dr. Dixit finds that Plaintiff Carr was completely disabled dating back to  
Plaintiff Carr's initial date of disability, August 29, 2001. Dr. Dixit opines

consistently over three years that Plaintiff Carr is completely disabled by fibromyalgia, Sjögren's Syndrome, and their related symptomatology.

26. In a report dated March 26, 2003, Dr. Dixit wrote, "This patient has been disabled for a prolonged period of time. Her prognosis is poor. She is totally and permanently disabled and unlikely to be able to return to any form of employment." (CF000229).
  27. On September 2, 2004, Dr. Dixit wrote:

I have reviewed the reports by Dr. Bennett and also the report by Dr. Uomoto. I believe you have copies of these reports. As you well know, Dr. Uomoto's feeling, in line with my medical impression, is that the patient has cognitive disorder and fibromyalgia syndrome. You also know from the report of Dr. Bennett that the patient has fibromyalgia with an associated mood and sleep disorder. I am in agreement with him that this developed during 2001. As noted by Dr. Bennett, despite long-standing and appropriate treatment with a trial of multiple modalities, the patient has not experienced any significant improvement in her symptoms. Indeed, a case could be made for steady deterioration of her symptoms.

I will once again emphasize that the patient has long-standing and severe fibromyalgia and that the symptoms of this became disabling in the summer of 2001. The condition has resulted in total and permanent disability. I do not believe that Mrs. Carr is employable.

28. Plaintiff Carr was also seen by Robert Bennett, MD for a rheumatological consultation on April 13, 2004 (records at 249-303, CV at CF000271-303).

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3 29. Dr. Bennett is a board-certified rheumatologist and world-renowned expert  
4 on fibromyalgia.  
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6 30. He based his opinion on history, medical records, literature, and client  
7 examination.  
8  
9 31. Upon palpation, Plaintiff Carr was positive for 17 out of 18 fibromyalgia  
tender points.  
10  
11 32. Dr. Bennett wrote :

12 Based on the information I reviewed, including my own  
13 history and physical examination, Plaintiff Carr is entirely  
14 disabled from being able to be competitively employed in  
15 the demanding and high stress jobs that she held up to  
2001. The Social Security Administration has agreed that  
she is disabled and awarded her Social Security Disability  
pension retroactive to August of 2001 . . .

16 The major reasons for Plaintiff Carr's disability are  
17 the constant musculoskeletal pain of fibromyalgia  
18 with its associated cognitive dysfunction and non-  
restorative sleep with associated fatigability. She  
19 also has a diagnosis of Sjögren's syndrome - this is  
a chronic autoimmune disorder that itself causes  
20 fatigue and varying degrees of disability. There is  
no known cure for Sjögren's syndrome and over  
21 time it may involve major organs such as the lungs,  
heart and brain. Patients with Sjögren's syndrome  
have a 44 fold risk of developing lymphoma. Her  
22 disability is compounded by a moderately severe  
mood disorder with both depression and anxiety  
23 components. Currently there is no cure for  
fibromyalgia or Sjögren's syndrome and at age 54  
24 it is my opinion that Plaintiff Carr is permanently  
25  
26

disabled and will not be able to be competitively employed at any time in the future. (CF000256).

33. Renowned physical capacities evaluator Theodore Becker, Ph.D., RPT, performed a physical capacity evaluation of Plaintiff Carr on May 4, 2004 (report CF000309-350, CV at CF000340-350).
34. Dr. Becker's report concludes that Plaintiff Carr is unable to perform the material duties of her own or any other occupation. She is completely and totally disabled.
35. Dr. Becker's report conclusively states that Plaintiff Carr is work intolerant.
36. Dr. Becker performed a battery of performance tests on Plaintiff Carr over a period of 9.5 hours on two days, May 4-5, 2004.
37. Regarding Plaintiff Carr's step test, Dr. Becker wrote:

The overall physiological response shows significant dysfunction of tolerance, indicating inability to sustain activity. There is exceptionally restricted physiology, which will indicate that tolerances of function cannot be sustained. (CF000318).

38. In addition, Dr. Becker put Plaintiff Carr through a Gait Evaluation/Physiology test. After the results of that test, Dr. Becker stated:

The physiological response is exceptionally dysfunctional, showing inability to sustain activity. The overall performance will indicate that she is unable to maintain physiological response associated with work environment. (*Id.*)

39. Dr. Becker concluded:

Exceptionally restricted with poor tolerance of sustainable application. There is gross physiological challenge, which indicates inability to sustain seated activity work, and also inability to sustain upright application work. The overall work tolerances in sedentary application should be identified as 4 to 8 beats above resting, or in this case at 68 b.p.m. Her output response, which is inconsistent with the expected linear and steady state output response.  
(CE000320)

40. Dr. Becker agrees with Plaintiff Carr's other providers that she is completely and totally disabled. Thus he summarizes Plaintiff Carr's inability to work:

The physiological output response precludes her ability to sustain work in an ongoing basis, as required of competitive and predictable work function. Both sedentary/seated work and upright/standing work fails to meet the criterion of acceptance in physiology of linear and steady state. All work endeavors show decreasing performance over time, with increasing physiological response of heart rate elevation. (CF000321).

41. Plaintiff Carr was also evaluated by preeminent neuropsychologist Jay M. Uomoto, Ph.D. (records at CF000351-381)
  42. Dr. Uomoto is a licensed psychologist specializing in neuropsychology (CV at CF000371-381).
    - 43. He is also a fellow and diplomate in medical psychotherapy of the American Board of Medical Psychotherapists and Psycho-diagnostician, and a professor in the graduate department of psychology at Seattle Pacific University.

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3 44. Dr. Uomoto found in his May 7, 2004 evaluation that Plaintiff Carr had  
4 significant cognitive problems stemming from her fibromyalgia.  
5  
6 45. In checking the validity of his testing he wrote:

7 Given the patient's effort on the examination, behavioral  
8 presentation throughout testing procedures, and results of  
9 symptom validity testing, the patient's performance was  
10 judged to be a reflection of maximum effort. Using the  
11 Slick Criteria the patient did not meet criteria for  
12 malingered neurocognitive dysfunction. The patient also  
13 did not evidence behaviors or performances that are  
indicative of symptom enhancement or dissimulation. The  
patient put forth a concerted effort on all tasks, and test  
results represent the patient's maximum cognitive capacity  
in the context of this evaluation. (CF000355-356).

14 Dr. Uomoto discusses several areas where Plaintiff Carr has cognitive impairment  
15 affecting her ability to work in any occupation by noting:

- 16 • Impairment in motor strength bilaterally  
17 Impaired oral word fluency (letter fluency) likely due to impaired  
information processing skill  
18 • Alternating and divided attention deficits; likely to be easily derailed from  
the task at hand  
19 • Impaired sustained attention ability where there is a demand for speeded  
and efficient processing of information  
20 • Impaired verbal declarative memory when new learning and consistent  
recall is required  
21 • Impaired visual-spatial learning ability upon single trial learning demands;  
and  
22 • Problem-solving and adaptive reasoning impairment

- 23  
24 46. Dr. Uomoto concludes:  
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26 The patient's current neuropsychological problems are likely to  
27 interfere with her prior work tasks. The patient states that her work  
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3 required a significant degree of analytical thinking, problem-  
4 solving, trouble shooting, and working with complex concepts.  
5 She was required to work very quickly, identify patterns in  
6 problems that arise in database management and in data  
7 architecture aspects of her position, and to develop efficacious  
8 solutions to these problems. The current results suggest she would  
9 have difficulties with these types of analytical tasks, due to her  
10 attention problems, difficulties with simultaneous processing  
11 secondary to alternating and divided attention demands. Adaptive  
12 reasoning deficits will also play a role in these daily work tasks.  
13 She often is required to convey complex technical concepts to  
14 senior management, and this requires considerable problem-  
15 solving ability. Her cognitive impairments will make this difficult  
16 to do. Problems with attention will likely impact her ability to  
17 sustain her effort on complex tasks in the work setting. Due to  
18 memory deficits, she will have trouble tracking and storing  
19 important information that may be provided to her incidentally.  
This in turn will affect her problem-solving effectiveness.  
Problems with chronic pain, sleep deprivation and fatigue also  
contribute to her cognitive problems.

16 On the basis of reasonable neuropsychological probability, and on  
17 a more likely than not basis, the patient is not competitively  
18 employable on a full-time or part-time basis in her former position.  
I would concur with Dr. Dixit's conclusion of March 2003 that the  
patient is not competitively employable in any position.  
(CF000361-362).

- 20 47. Plaintiff Carr was also evaluated by a vocational rehabilitation specialist Donald  
21 Uslan, MA, MBA on May 5, 2004 (CF000382-454, CV at CF000427-454).  
22 48. Mr. Uslan evaluated Plaintiff Carr for employability.  
23 49. He reviewed records from her treating physicians and independent evaluators as  
24 noted above, and also reviewed records from Defendant Liberty, and concluded  
25 that, ". . . it is my opinion that she is totally and completely disabled from any and  
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3 all employment, be it full or part-time, in any exertional level of employment.”  
4  
(CF000425).

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50. Mr. Uslan also states:

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7 Plaintiff Carr is not able to work in the competitive labor  
8 market for gainful employment on a full-time basis, be it  
9 unskilled, semi-skilled or skilled level, or in the sedentary,  
10 light or medium exertional categories. It is not reasonable,  
11 nor possible, for an employer to accommodate her medical  
12 conditions with her functional limitations at this time.  
13 Plaintiff Carr is not able to work at another position.

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51. Mr. Uslan concludes:

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As a licensed mental health counselor and certified  
rehabilitation counselor in clinical practice, it is my  
opinion, on a more-probable-than-not-basis, that Plaintiff  
Carr is totally and completely disabled. I base this  
judgment on my professional experience in treating and  
evaluating hundreds of patients with the same or similar  
medical, physical and cognitive conditions as Plaintiff Carr,  
and in my professional capacity in having published and  
lectured extensively on this subject (disability, impairment  
and rehabilitation in rheumatologic conditions) . . . in  
consideration of her age, medical and physical condition,  
education and training.

52. Plaintiff Carr also has friends and family who have written personal statements  
regarding her disability.

53. Plaintiff Carr's friend, Amy Chernay, wrote (CF000455):

I have known Anita Carr for 23 years. When she lived near  
me in Texas she was a very active adult. She volunteered  
for political campaigns and at her daughter's school. She  
also had many other volunteer activities such as teaching

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3 computer skills to elementary aged school children,  
4 working on local arts projects, activities in her church and  
5 PTA and volunteering at local museums to give docent  
6 tours. She also played tennis and I took 3-mile walks with  
7 her regularly. She was an active mother who had full  
8 responsibility for a young child. She also completed a  
9 degree in graduate school.  
10

11 Anita now complains of being in constant pain and being  
12 unable to carry out the duties taking care of her home as she  
13 once had. She also complains of problems with her  
14 memory.  
15

- 16 54. Ellen Hancock wrote a letter supporting Plaintiff Carr's claim for disability  
17 (CF000456-457):  
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19 . . . She has also been a successful businesswoman,  
20 working her way up into a Director level position at several  
21 companies. She has some very strong ethics and always  
22 had enjoyed her work in a highly technical field and put in  
23 some very long days.  
24

25 Anita skied, did white-water rafting & played tennis up  
26 until 2001, but she found it too painful to do these physical  
activities since she diagnosed with fibromyalgia.  
27

28 Since the spring of 2001, Anita's health has been  
problematic. She has not been able to drive much & has  
complained of headaches, pain, dizziness, fatigue, heart  
palpitations, nausea, memory issues & general malaise.  
She has consistently complained to me about these  
symptoms and continues to do so.  
29

30 Sometimes when I call her in the middle of the day I am  
waking her up from a long nap. When I saw her on July  
31 29<sup>th</sup>, 2004 and we went for a very short walk of several  
blocks, she became fatigued and her legs hurt. That same  
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3       day when we ate lunch, she arose from her dining chair in  
4       pain and moved very slowly.  
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7       On August 29<sup>th</sup> we went shopping and when we went into  
8       the first store, Anita wanted to find a place to sit and have  
9       tea in their small café, saying she was already tired.  
10

11      55. Plaintiff Carr's daughter, Elena Carr, wrote (CF000459):  
12

13       I am the only child of Anita B. Carr and have a very close  
14       relationship with her. Since she has been afflicted with  
15       fibromyalgia, her energy levels have dropped dramatically.  
16       Sometimes she has trouble simply getting out of bed and is  
17       forced to take several rests throughout the day.  
18

19       Her ability to function in normal situations has dramatically  
20       decreased. Recently, my mother and I visited Las Vegas.  
21       We had just arrived and checked into the hotel. After my  
22       mom took a nap, we went out to explore the strip. We had  
23       only walked a few blocks when she could go no further.  
24       Her frustration with the pain quickly turned to tears and we  
25       had to sit for twenty minutes before she could muster the  
26       energy to return to the hotel, where she promptly went back  
27       to bed. This is the same woman who would drive me to  
28       Yosemite for a weekend and wake up at the crack of dawn  
      for an all-day hike to Vernal Falls.

19      56. Plaintiff Carr wrote (CF000460-461):  
20

21       Starting in January of 2001 I began experiencing severe headaches,  
22       severe neck pain, severe arm & hand pain, numbness & tingling in  
23       my hands, moderate back pain, moderate leg & knee pain,  
24       overwhelming tiredness, weakness, mental confusion &  
25       forgetfulness. I had very dry eyes and was using eye drops several  
26       times a day. I had to go home on many lunch hours to just sleep  
27       and fortunately I lived 5 minutes from my office. I found that I had  
28       no energy in the morning after awakening from at least 7 hours of  
      sleep. I felt very tired & weak and felt like I could not even go to  
      work. I forced myself. I typically worked a 10 hour day.

I finally felt that I could not continue to work. I was exhausted. I was having more serious memory issues (even once forgetting the name of a former employee from SBC Corporation who had come to work at Providian) and I was living in pain. I could not keyboard due to the pain in my hands/wrists/arms. I could not concentrate in meetings and I would lose track of my train of thoughts. I had headaches every day. My last day of work was Aug. 28, 2001.

After I left the work environment I would wake up in the morning and then feel so tired I had to go right back to sleep and I would sleep 3-4 hours of very deep sleep. I had no energy. On some days I was in too much pain to get out of bed.

I continue to experience headaches, severe pain, overwhelming tiredness and cognitive problems. Again, the symptoms wax and wane. I seem to have somewhat better days if it is warm and the pressure is high. Other days, for no real reason, I cannot get out of bed due to the pain. Even the bottom of my feet hurt to walk on them.

I typically try to read the morning newspaper when I wake up, but most often I cannot stay focused on a single article to read through it.

57. All of Plaintiff Carr's providers agree she continues to be severely disabled and can no longer meet the requirements of full time work in her own or any other occupation, and that this has been so since August 28, 2001 or sooner.
58. Plaintiff Carr fulfills Liberty Life's definition of disability as she, since August 29, 2001, has been unable to perform, with reasonable continuity, all of the material and substantial duties of her own or any other occupation for which she is or could

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3       become reasonably fitted by training, education, experience, age and physical and  
4       mental capacity dating back to August 29, 2001.

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59. Plaintiff Carr was completely and totally disabled throughout the entire  
6       elimination period as discussed by her doctors and independent evaluators.

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### **III. RIGHT TO BENEFIT UNDER ERISA**

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Plaintiff Carr adopts and alleges all of the foregoing, and alleges the following:

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1. The LTD policy at issue in this case may be determined by the Court to be an  
11       "employee welfare benefit plan" or a "welfare plan," as defined in §1002 of *The*  
12       *Employment Retirement Income Security Act*, 29 U.S.C., § 1001, *et seq.*  
13       ("ERISA").
- 14       2. If this Court finds that the disability insurance purchased from Defendant Liberty  
15       is governed by ERISA, Plaintiff Carr alleges that Defendant Liberty violated  
16       federal statutory and common law duties owed to Plaintiff Carr when Defendant  
17       Liberty terminated her benefits.
- 18       3. Defendant Liberty's breach of the duties it owed to Plaintiff Carr proximately  
19       caused Plaintiff Carr damages that were natural and foreseeable consequences of  
20       Defendant Liberty's wrongful conduct.
- 21       4. Plaintiff has the express right and standing under ERISA § 1132 to bring a cause  
22       of action against Defendant Liberty to enforce her rights and recover the benefits

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COMPLAINT - 19

**KRAFCHICK LAW FIRM**  
2701 First Avenue, Suite 340  
Seattle, Washington 98121  
(206) 374-7370 Fax (206) 374-7377

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3       she is due under the terms of her LTD policy, and to clarify her rights to future  
4       benefits under the terms of the LTD policy.

5       5. Under ERISA, Plaintiff Carr has the right to recover the reasonable attorneys' fees  
6       and costs she incurred in this action against Defendant Liberty, should the  
7       Plaintiff establish her rights to recover the disability benefits terminated and  
8       denied her by Defendant Liberty.

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10                          **IV. PRAYER FOR RELIEF**

11                          WHEREFORE, Plaintiff Carr prays for judgment against Defendant Liberty in an  
12       amount that compensates Plaintiff Carr for damages she sustained:

- 13       1. Declaratory judgment and an injunction providing that the Court enforce  
14       Defendants' continuing obligations owed Plaintiff on her long-term disability  
15       policy, and that Defendants cannot decline to pay her in the future for reasons  
16       wrongfully relied on to the time of judgment;
- 17       2. An award of full benefits due Plaintiff under the Plan from the time of initial  
18       entitlement to benefits, August 29, 2001, to the date of judgment in favor of  
19       Plaintiff in this case; and
- 20       3. For Plaintiff's attorney fees, costs, and disbursements incurred by bringing this  
21       cause of action, along with pre-judgment interest and any other relief permitted by  
22       law, which the Court deems just and equitable.

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28                          COMPLAINT - 20

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3 Dated August 2, 2005:

4 KRAFCHICK LAW FIRM

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6 By: \_\_\_\_\_  
7 Steven P. Krafchick, WSBA #13542  
8 Attorney for Plaintiff  
9 Pro Hac Vice Application pending  
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Dated August \_\_\_\_\_, 2005:

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